

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

PEOPLE OF THE STATE
OF MICHIGAN,

Plaintiff,

vs.

Case No. 2006-474-FH

ALEX ANDREW AZZOPARDI,

Defendant.

OPINION AND ORDER

Defendant has filed a motion to quash the information.

Following a preliminary examination held on January 31, 2006, held in the 41-A District Court, before Hon. Douglas P. Shepherd, defendant was bound over to this Court to stand trial for one count of possession of heroin less than 25 grams, MCL 333.7403(2)(a)(v), and possession of ecstasy, MCL 333.7403(2)(b)(i).¹ On June 10, 2006 defendant filed a motion to quash the information.

The decision to bind a defendant over is reviewed for abuse of discretion. *People v Beasley*, 239 Mich App 548, 552; 609 NW2d 581 (2000). To bind a defendant over for trial there must be probable cause to believe a crime was committed and defendant committed it. MCL 766.13; MCR 6.110(E). In reviewing a district court's decision to bind a defendant for trial, a circuit court must consider the entire record of the preliminary examination, and it may not substitute its judgment for that of the magistrate. *Beasley, supra*. Reversal is appropriate

¹ Count I of the complaint originally stated possession of cocaine, but it was amended on February 7, 2006 to possession of heroin.



only if it appears on the record that the district court abused its discretion. *Id.*

The purpose of a preliminary hearing is to determine whether there is probable cause to believe a crime was committed and that the defendant committed it. MCR 6.110. See also, *People v Perkins*, 468 Mich 448; 662 NW2d 727 (2003). Probable cause requires a reasonable belief that the evidence presented during preliminary examination is consistent with defendant's guilt. *People v Northey*, 231 Mich App 568, 575; 591 NW2d 227 (1998). Although proof beyond a reasonable doubt is not required at a preliminary examination, the prosecution must present evidence on each element of the crime charged or evidence from which these elements may be inferred. *People v Giddings*, 169 Mich App 631, 633; 426 NW2d 732 (1988). Circumstantial evidence, coupled with those inferences arising therefrom, is sufficient to establish probable cause to believe that the defendant committed a felony. *People v Terry*, 224 Mich App 447, 451; 569 NW2d 641 (1997).

The January 31, 2006 preliminary examination established on November 8, 2005 Officer Randy Plante executed a traffic stop of a yellow Ford Focus for speeding. *Preliminary Hearing Transcript*, dated January 31, 2006, p 7-8. Officer Plante testified there were several passengers in the vehicle. *Id.* at 8. While Officer Plante initially interviewed defendant, he observed defendant exhibited sluggish speech and bloodshot, glossy, dilated eyes that were slow to react. *Id.* at 9. Upon this observation, Officer Plante had defendant exit the vehicle and continued to evaluate him for possible use of controlled substances. *Id.* at 10, 29. Sergeant Jerome Carroll arrived on the scene, proceeded to evaluate defendant, and received consent to search the vehicle. *Id.* at 58-60. Defendant was placed in the back of Officer Plante's patrol vehicle, but was informed he was not under arrest.² *Id.* at 17. Officer Plante testified defendant was not free

² There was a conflict in the testimony as to the sequence of the events which followed. For the purposes of this motion this conflict is not significant.

to leave and the doors of the patrol vehicle were locked. *Id.* at 34. At this time the passengers were removed from the vehicle. *Id.* at 38. Sergeant Carroll searched the vehicle and discovered a 33mm film canister on the driver floorboard near the accelerator pedal containing a clear cellophane packet with a white and brown speckled pill and a baggie with two cream colored rocks. *Id.* at 62. He further discovered behind the driver's seat another 35 mm canister containing a cellophane packet with a white and brown speckled pill.³ *Id.* at 62-63. Defendant was confronted with the results of the search, admitted to Officer Plante that he received the pills from classmates at school, and believed it to be ecstasy. *Id.* at 18. Officer Plante arrested defendant, but admits defendant was not advised of his Miranda rights. *Id.* at 19, 21.

Defendant contends the lower court erred by permitting statements allegedly made by defendant into evidence without the required *Miranda* warnings. According to defendant, without these statements the people failed to introduce evidence of possession or control of a prohibited controlled substance. The evidence at the preliminary hearing, defendant asserts, was insufficient to demonstrate probable cause. The people have not filed a response to defendant's motion to quash the information.

Assuming arguendo that defendant's statement must be suppressed because it was obtained in violation of *Miranda v Arizona*, 384 U.S. 436; 86 S.Ct. 1602; 16 L.Ed.2d 570 (1975), the Court finds there was sufficient evidence to support the information. The crime of possession of a controlled substance requires proof that the defendant exercised control or had the right to exercise control of the drug and knew it was present. *People v Simpson*, 104 Mich

³ The record indicates some discrepancies as to the contents of each container. Sergeant Carroll, who conducted the search of the vehicle, testified to the contents when the canisters were initially discovered. There is no evidence to establish the contents were arranged in a different manner upon initial discovery.

App 731, 733; 305 NW2d 249 (1980). In *People v Ridgeway*, 74 Mich App 306, 317-319; 253 NW2d 743 (1977), the court stated:

Based on the admissible evidence, it would be impossible to make a choice beyond a reasonable doubt. Therefore, we hold that the evidence was insufficient to support the conviction for possession of a controlled substance. Where more than one person is riding in the front seat of a car in which contraband is discovered and none of the occupants owns the car or has had exclusive possession of the car for an extended period and there is no evidence to indicate which, if any, of the occupants actually knowingly possessed the contraband except the fact that it was found lying closer to one occupant than to the others, the evidence is insufficient to convict that occupant of a possession offense. *People v. Davenport*, supra, *People v. Summers*, 68 Mich.App. 571, 243 N.W.2d 689 (1976).

More recently, in *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998), the court explained:

In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v. Wolfe*, 440 Mich. 508, 515, 489 N.W.2d 748 (1992), amended 441 Mich. 1201 (1992). Here, defendant challenges the sufficiency of the evidence to establish his knowing possession of the controlled substances.

A person need not have physical possession of a controlled substance to be found guilty of possessing it. *Wolfe*, supra at 519-520, 489 N.W.2d 748. Possession may be either actual or constructive, and may be joint as well as exclusive. *Id.* The essential question is whether the defendant had dominion or control over the controlled substance. *People v. Konrad*, 449 Mich. 263, 271, 536 N.W.2d 517 (1995). A person's presence at the place where the drugs are found is not sufficient, by itself, to prove constructive possession; some additional link between the defendant and the contraband must be shown. *Wolfe*, supra at 520, 489 N.W.2d 748; *People v. Vaughn*, 200 Mich.App. 32, 36, 504 N.W.2d 2 (1993). However, circumstantial evidence and reasonable inferences arising from the evidence are sufficient to establish possession. *People v. Sammons*, 191 Mich.App. 351, 371, 478 N.W.2d 901 (1991), cert. den. 505 U.S. 1213, 112 S.Ct. 3015, 120 L.Ed.2d 888 (1992).

See also *People v Girard*, 269 Mich App 15, 21; 709 NW2d 229 (2005), quoting *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002) ("It is for the trier of fact...to determine

what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences”).

In the instant matter, the evidence establishes defendant was driving the motor vehicle in which the prohibited controlled substances were found. The evidence further suggests that he either owned or had exclusive possession of the vehicle, demonstrated by Officer Plante’s testimony that defendant requested a passenger drive the vehicle home so his parents would not know it was impounded. *Preliminary Hearing Transcript*, dated January 31, 2006, p 44-45. This evidence would distinguish *Ridgeway, supra*, where none of the occupants owned the vehicle. In addition, circumstantial evidence demonstrated that defendant exhibited behaviors consistent with use of a controlled substance. A search of the vehicle with defendant’s consent by Sergeant Carroll uncovered a 35 mm canister on the driver floorboard near the accelerator pedal containing suspected ecstasy and another prohibited controlled substance and an additional 35 mm canister was found behind the driver seat containing suspected ecstasy.

Therefore, the evidence and reasonable inferences establish more than just defendant’s near proximity to the prohibited controlled substances. The jury could find beyond a reasonable doubt that defendant was in sole or joint possession of the prohibited controlled substances. As a result, there is sufficient evidence to support the charges and defendant’s motion to quash the information is denied.

Based upon review of the record, defendant’s motion to quash the bindover and dismiss the charges is DENIED.

IT IS SO ORDERED.

DIANE M. DRUZINSKI
CIRCUIT JUDGE

AUG - 8 2006

AUG - 8 2006

Date:

Diane M. Druzinski, Circuit Court Clerk

A TRUE COPY
GAMIELLA SABAUGH, COUNTY CLERK
BY: [Signature] COURT CLERK

DMD/aac

cc: Angela Bray, Asst. Prosecuting Attorney
Sidney R. Borders, Attorney at Law